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should be considered conclusive pr[illegible]ed that certain entry it was careful to make a pro[illegible] effect. [illegible] Hindu whole we see no reason for giving [illegible]veness to a presumption where the Legislature has not in [illegible]press terms done so. We are supported in this view by the ruling in the case of *Banwari Lal* v. *Niadar* (1). We therefore, agreeing with our brother Knox, dismiss the appeal with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*December 2.*

*Before Mr. Justice Sir George Knox.*

EROR v. KASHI NATH AND ANOTHER. *

[illegible] *(Gambling Act), se[illegible]tions 5 and 6—Warrant for search [illegible]nation"—Procedure—Endorsement [illegible] house to whom it was issued.*

Warrants issued under Act No. III of 1867 are governed by those provisions of the Code of Criminal Procedure which provide for the issue and execution of warrants in general: there is, therefore, no objection to the officer to whom such a warrant is originally issued endorsing it to another officer, provided that the latter is an officer to whom such warrant could be legally issued in the first instance.

IN this case a Magistrate of the district of Benares, having before him information of various kinds tending to the conclusion that a certain house in the city of Benares was used as a common gaming house by two persons named Kashi Nath and Raj Nath, issued a warrant under section 5 of Act No. III of 1867 for the search of the suspected house. The warrant was addressed to the Kotwal of Benares. The Kotwal endorsed it over to the Sub-Inspector of the Chauk thana for execution, and it was executed by that officer. On entering the house a large collection of persons of very various castes was found there, apparently gambling, and in front of Kashi Nath and Raj Nath was a box containing money. Kashi Nath and Raj Nath were convicted under section 3 of Act No. III of 1867, and sentenced to three months' rigorous imprisonment each. Against their convictions and sentences they applied in revision to the High Court.

* Criminal Revision No. 622 of 1907, against the order of Baij Nath, Sessions Judge of Benares, dated the 17th of September, 1907.

(1) (1906) I. L. R., 29 All., 158.

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Dr. Sat[illegible]ji, for the appellant.

Babu Sital[illegible], for the respondent.

STANLEY, C.J.[illegible]RKITT, J.—The question in this appeal is whether the [illegible]s "shall pre-ume," in sub-section (3) of section 201 of the Tenancy Act, No. II of 1901, should be construed in their ordinary sense or as meaning "shall conclusively presume." If the latter meaning is to be put upon the language, a plaintiff who is recorded proprietor would be entitled to a decree in the Revenue Court as a matter of course. The question is by no means free from difficulty. A presumption of law is merely an arbitrary inference which the law directs a judge to draw from particular facts, and which may be either conclusive or rebuttable. It is ordinarily rebuttable. The words "shall presume" when used in the Evidence Act mean that the Court shall regard a fact as proved unless and until it is disproved. On the other hand, when one fact is declared by that Act to be conclusive proof of another, on proof of the one fact the Court is to regard the other as proved and must not allow evidence to be given for the purpose of disproving it (section 4). If the words "shall presume" bear the same meaning in the Tenancy Act, as they do in the Evidence Act, then the fact that a plaintiff is the recorded owner is only *primâ facie* proof which shifts the burden of proof to the defendant, who may, if he can, by evidence overbear the *primâ facie* proof. Is there any grave reason for interpreting the words "shall presume" as equivalent to the words "shall conclusively presume?" It appears to us that there is no such reason either on the ground of convenience or any like matter to attach to them any other than their ordinary meaning. Indeed to do so might create much inconvenience: for example, in this Province on the death of a proprietor leaving a widow and a son or sons, the widow is very commonly recorded as owner for the sake, as it is said, of consolation. In such a case it would be highly inconvenient if the Revenue Court were not allowed to go behind the record and ascertain the true state of the case. If the Legislature had intended that the presumption should be conclusive, it could easily have so provided. We find in section 19 of the Act that when the Legislature desired to provide that an entry in the khewat

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pointed out by the Sessions Judge, and further, a large body of some thirty men who were found in the house in question, consisting, as that body did, of Brahmans, Ahirs, Sonars, Banias, Bharbunjas, common cultivators, shopkeepers, Manihars, and Kayasthas, points to the conclusion that they met for the purpose of gambling. I attach great significance to this fact also that a box was found containing money, and that the box was found under the feet of Kashi Nath and Raj Nath; so far as my experience goes it is a fair inference that the money which that box contained was for the benefit of the owners of the house.

Nor do I think that there is much force in the other contention. The learned counsel who appears for the accused argued that the warrant was one that was issued, not under the Code of Criminal Procedure, but under Act No. III of 1867, and so it could not have been passed on by the officer to whom it was granted to another officer. I, however, find nothing in Act No. III of 1867, which would prevent the passing on of the warrant to another officer, provided always that such latter officer was not of a rank below the rank authorized under the Act to enter and search. It is not contended that the officer who executed the warrant was below the rank of officer who could execute a warrant under Act No. III 1867. That Act empowers a Magistrate to authorize any police officer not below the rank of a Sub-Inspector of Police to enter and search a house. There is no provision requiring the Magistrate to mark by name the particular officer who is to execute the warrant. The view I take is that warrants issued under Act No. III of 1867 are governed by those provisions of the Code of Criminal Procedure which provide for the issue and execution of warrants in general. In that case there arises no such difficulty as that raised in the present case; the Code does authorize a warrant being passed on to another officer for execution. I dismiss the application.

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Mr. *C. C. Dillon*, for the applicant.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

KNOX, J.—Kashi Nath and Raj Nath have been convicted of an offence under section 3 of Act No. III of 1867. They appealed from their conviction to the Court of Session at Benares. The conviction was upheld, but the sentence modified. The case has come before me in revision, and I am asked to interfere with the conviction and sentence on the ground that owing to the Kotwal of Benares having endorsed a search warrant addressed to him under section 5 of Act No. III of 1867 to another police officer, the warrant so executed was illegal, and the entry and search of the house in question were not such as to give rise to the presumption contained in section 6 of Act No. III of 1867. It is further contended that the record does not show that the Magistrate who granted the warrant acted on credible information, and if so he had no jurisdiction to grant the warrant. From this it would follow that the police officer acted illegally in entering and searching the house, with the further result, again, that the presumption authorized by section 6 could not be entertained by the Court. The warrant on the face of it contains an entry to the effect that the Magistrate acted on credible information; but it is contended that it is a printed form and that the accused has a right to demand that there should be on the record some material, which the appellate or revisional Court can see, and from which it can judge whether the information was in fact credible. In the present case I will not enter into this point, for I find, looking into the judgment of the appellate Court that the Magistrate who issued the warrant had a good deal of information from which he was authorized to issue the warrant that he did issue. Reference was made to several cases, namely, *Queen-Empress* v. *Ram Bharose* (1), *Queen-Empress* v. *Chiranji* (2) and *Queen-Empress* v. *Yusuf Husain* (3). All these deal with what should be deemed credible information. As is pointed out in *Emperor* v. *Abdul Samad* (4), the meaning of the words "credible information" must in each case depend on its own circumstances. In the present case numerous circumstances have been

(1) Weekly Notes, 1890, p. 226.
(2) Weekly Notes, 1891, p. 111.
(3) Weekly Notes, 1889, p. 162.
(4) (1905) I. L. R., 28 All., 210.